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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

REGINOLD A. PARKER,

Defendant and Appellant.

B174571

(Los Angeles County  
Super. Ct. No. BA250656)

Appeal from a judgment of the Superior Court of Los Angeles County. Michael E. Pastor, Judge. Affirmed.

Kathleen Caverly, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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Reginold Parker appeals from a judgment entered after a jury convicted him of discharging a firearm with gross negligence and being a felon in possession of a firearm. The jury also found appellant had suffered a prior serious or violent felony conviction and had served two prior prison terms. The court sentenced him to six years in prison.

We appointed counsel to represent appellant on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. On July 2, 2004 we advised appellant he had 30 days within which to personally submit any contentions or issues he wished us to consider. Appellant filed a supplemental brief arguing that the testimony of witness Brenda Solis should be rejected on the basis of inconsistencies between her testimony at the preliminary hearing and at trial. He also argues that the testimony of Officer Kevin Webb was inconsistent with that of Officer Juli Munson.

It appears appellant intends by these arguments to challenge the sufficiency of the evidence supporting his conviction. To resolve this issue, we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable jury could find guilt beyond a reasonable doubt. (*People v. Ceja* (1993) 4 Cal.4th 1134, 1138.)

To establish the offense of discharging a firearm with gross negligence, the prosecution was required to prove appellant willfully discharged a firearm in a grossly negligent manner that could have resulted in injury to, or the death of, another person. (Pen. Code, § 246.3) In the criminal context, gross negligence means a disregard of human life or an indifference to consequences, conduct that is “ ‘such a departure from what would be the conduct of an ordinarily prudent or careful [person] under the same circumstances as to be incompatible with a proper regard for human life. . . .’ ” (*People v. Alonzo* (1993) 13 Cal.App.4th 535, 539-540.) Because the parties stipulated appellant had a prior felony conviction, the prosecutor needed only to prove appellant possessed a firearm in order to meet his burden with respect to the felon in possession count.

Kathryn McGilvery testified she was standing in a church parking lot on a Sunday afternoon, talking to a friend, when she noticed a man across the street yelling, cursing, and appearing to argue with an invisible opponent. She then saw a gun in his hand and saw him shoot into the air. He then fired shots to the right and left. He crossed the street toward McGilvery, who ran into the church with her friend. McGilvery was unable to identify the man, but she recalled he was wearing a white tee shirt.

Brenda Solis testified she owned two homes. She was inside one of them, near the church, when she heard a shot fired. When she looked to see the source of the shot, she saw appellant walking around with a gun in hand, firing it upwards, from side to side. He was wearing a white tee shirt and black trousers and was mumbling something Solis did not understand. Solis saw him walk toward the church parking lot. She called the police and saw them arrest appellant after they arrived.

Officer Kevin Webb, who flew to the scene in a helicopter, saw appellant in the church parking lot, holding a gun. Appellant was dressed in black trousers and a white tank top. Webb advised officers on the ground. As Webb watched, appellant threw down the gun and looked up at the sky. Officer Juli Munson testified she responded to the scene by car. When she approached appellant, she saw a gun on the ground about five feet from him. Appellant was staggering around, looking into the sky. He was wearing a white tank top. Munson's partner took appellant into custody and Munson recovered the gun, which contained five expended casings. Appellant seemed to be either mentally impaired or under the influence of something.

This evidence amply supported appellant's convictions. Given the testimony of McGilvery, Solis, and Webb that appellant was in possession of a gun and appellant's admission of a prior felony conviction, no reasonable juror could fail to find appellant guilty of being a felon in possession of a firearm. Similarly, the collective testimony of all of the witnesses established that appellant was the person who stood across from the church parking lot firing the gun, then moved into the church parking lot. The testimony of McGilvery and Solis established that it was a neighborhood of homes, businesses, and

the aforementioned church. McGilvery and others were in the church parking lot and Solis was at a nearby home. Given the locale, repeatedly firing a gun, especially firing in several different directions, is an extreme departure from the conduct of an ordinarily prudent person and is incompatible with a proper regard for human life. Although appellant's shots fortunately failed to strike anyone, his conduct could easily have resulted in injury or death to someone nearby. Based upon this evidence, a reasonable jury could find appellant guilty beyond a reasonable doubt of discharging a firearm with gross negligence.

Any inconsistencies in Solis's testimony were a proper subject for impeachment and argument, and defense counsel availed himself of the opportunity to confront Solis with her purportedly inconsistent prior statements and to argue that these inconsistencies rendered her testimony unworthy of belief. The issue of Solis's credibility was therefore before the jury, which apparently found the inconsistencies immaterial. Conflicts and even testimony that is subject to justifiable suspicion do not justify the reversal of a judgment; it is the exclusive province of the trier of fact to determine credibility and the truth or falsity of the facts upon which credibility depends. (*People v. Allen* (1985) 165 Cal.App.3d 616, 623.)

Appellant's claim of a conflict between the testimony of Officers Webb and Munson is incorrect. Webb testified he saw appellant with the gun in his hand, then saw him throw it down. Munson's testimony that she saw the gun on the ground clearly indicates she her observations occurred after appellant threw the gun down.

We have reviewed the entire record and are satisfied Parker's attorney has fully complied with her responsibilities and that no arguable issue exists. (*People v. Wende* (1979) 25 Cal.3d 436, 441.)

**DISPOSITION**

The judgment is affirmed.

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BOLAND, J.

We concur:

RUBIN, Acting P.J.

FLIER, J.